

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RHASHAWN WILSON,

Plaintiff,

- against -

CITY OF NEW YORK, NICHOLAS
MCQUAIL, JUSTIN ROGONZINSKY,
BRIAN HARTIGAN, BRYAN CARNEY,
and JOHN or JANE DOE 1-10,

Defendants.

ORDER

21 Civ. 479 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

In this action, Plaintiff Rhashawn Wilson brings numerous claims against Defendant City of New York and individual New York City Police Officer (“NYPD”) Defendants regarding his January 14, 2020 arrest. Defendants’ unopposed motion for summary judgment is pending. (Dkt. No. 41)

On April 8, 2022, Plaintiff filed – on consent – a request “to [a]mend the Complaint to substitute newly identified officers, Police Officer Justin Rogonzinsky, Police Officer Brian Hartigan, and Sergeant Bryan Carney, (NYPD Shield No. 5500) in place of [previously named] Defendant officers William Dunn and Karl Rugg.” The letter attached the proposed Amended Complaint as an exhibit. (Apr. 8, 2022 Pltf. Ltr. (Dkt. No. 33); Proposed Am. Cmplt. (Dkt. No. 33-1)) This Court so-ordered Plaintiff’s request that same day. (Apr. 8, 2022 Order (Dkt. No. 34) at 2)

Although the Court approved Plaintiff’s request to file the Amended Complaint, Plaintiff never filed the Amended Complaint on the docket. There is also no indication on the

docket that the Amended Complaint was served on Defendants Rogonzinsky, Hartigan, and Carney.

In moving for summary judgment, Defendants address the Complaint rather than the Amended Complaint that this Court approved for filing. (Def. Br. (Dkt. No. 43) at 26, 29 (citing the Complaint))

In light of the Amended Complaint, the claims against Defendants William Dunn and Karl Rugg are dismissed. Defendants' motion for summary judgment (Dkt. No. 41) is denied without prejudice, given that it does not address the operative complaint. Plaintiff is ordered to (1) file the Amended Complaint on the docket as a standalone document, and (2) file proof of service on Defendants Rogonzinsky, Hartigan, and Carney by **September 29, 2023**. In the event that Plaintiff fails to file proof of service on Defendants Rogonzinsky, Hartigan, and Carney by **September 29, 2023**, this Court will entertain a motion to dismiss the claims against them for failure to prosecute.

With respect to Plaintiff's state law claims, New York law provides that "[n]o action . . . shall be prosecuted or maintained against the city . . . or any employee . . . unless a notice of claim shall have been made and served upon the city." N.Y. Gen. Mun. L. § 50-i(1). The notice of claim must be served "within ninety days after the claim arises." N.Y. Gen. Mun. L. 50e-(1)(a). "New York law requires a plaintiff to affirmatively plead that he has complied with the notice of claim requirement." Perkins v. City of New York, No. 14 CV 3779, 2017 WL 1025987, at *5 (S.D.N.Y. Mar. 15, 2017). "[T]o state viable claims under New York law against the City and the Officer Defendants, Plaintiff was required to plead: (1) that he 'has served [a] notice of claim; (2) at least thirty days have elapsed since the notice was filed (and before the complaint was filed); and (3) in that time the defendant has neglected to or refused to adjust or to

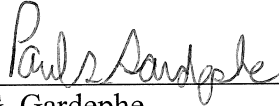
satisfy the claim.”” Morales v. City of New York, No. 13-CV-7667 (RJS), 2016 WL 4718189, at *9 (S.D.N.Y. Sept. 7, 2016) (quoting Hardy v. N.Y.C. Health & Hosp. Corp., 164 F.3d 789, 793-794 (2d Cir. 1999)). The Complaint and Amended Complaint do not mention a notice of claim, however, nor does the record contain any evidence that a notice of claim was filed. Accordingly, by **September 29, 2023**, Plaintiff will file proof of timely notice of claim, or will show cause why his state claims should not be dismissed.

A conference will be held in this matter on **October 12, 2023, at 10:00 a.m. in Courtroom 705 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York.**

The Clerk of Court is directed to terminate William Dunn and Karl Rugg as Defendants, and to terminate the motion (Dkt. No. 41).

Dated: New York, New York
September 19, 2023

SO ORDERED.



Paul G. Gardephe
United States District Judge